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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Digital Technologies, Inc.

File: B-291657.3

Date: November 18, 2004

John F. Klein for the protester.

Tenley A. Carp, Esq., McGuire Woods, for Communication Technologies, Inc., an intervenor.

Byron W. Waters, Esq., Department of Agriculture, for the agency.

Paul E. Jordan, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Where award was canceled after awardee under small business set-aside was declared other than small by Small Business Administration, agency's decision to amend solicitation and provide offerors opportunity to submit revised proposals--instead of making award to next offeror in line for award under original evaluation--was reasonable in view of material increase in estimated quantities and addition of geographically remote performance site.

DECISION

Digital Technologies, Inc. (DTI) protests the Department of Agriculture's decision to amend request for proposals (RFP) No. FSA-R-003-02DC to add additional work, and to allow revised proposals. The agency's decision followed cancellation of the original award due to a finding by the Small Business Administration (SBA) that the awardee was not a small business concern eligible for award. DTI asserts that, instead of amending the solicitation and requesting revised proposals, the agency should make award to the offeror next in line for award and then modify the awarded contract to add any new requirements.

We deny the protest.

The RFP, a small business set-aside issued in August 2002, provided for award of a fixed-price, indefinite-delivery/indefinite-quantity contract for a base year, with 4 option years, for remedial and preventive maintenance for an estimated 2,557 Farm Service Agency (FSA) IBM AS/400 Model 170 computers, 3,130 IBM Model 4317 laser

printers, and a small quantity of other laser printers (6 IBM Model 4028 and 12 IBM Model 5262). The computers and printers are located at approximately 2,370 county Field Service Centers, 50 state FSA offices, 10 Caribbean offices, and headquarters offices in 3 other cities. The RFP established required response times for any necessary remedial maintenance, with the contractor required to return the computer or printer to operation within 4 to 18 business hours—depending on the location of the equipment—of the government’s reporting the problem to the contractor. Award was to be made to the offeror whose proposal was most advantageous to the government based on technical capability, past performance and price.

The agency originally made award to Communication Technologies, Inc. (ComTek). Integration Technologies Group Inc. filed a protest challenging the award, asserting that ComTek’s proposal contained a misrepresentation. We sustained the protest and recommended that the agency open negotiations with offerors in the competitive range, request revised proposals, and make a new award determination. Integration Techs. Group, Inc., B-291657, Feb. 13, 2003, 2003 CPD ¶ 55. The agency obtained revised proposals in November 2003 and, after concluding its evaluation, awarded a contract to A&T Systems, Inc. on March 4, 2004. ComTek challenged A&T’s size status at the SBA. On April 19, the SBA determined that A&T was other than small and thus not eligible for the award. A&T’s appeal of the SBA’s determination was denied on July 1.

Thereafter, as the contracting officer prepared to make award to another offeror in the competitive range, she recognized that some of FSA’s requirements had changed. Specifically, the last option on a service contract for 2,439 IBM impact printers was due to expire at the end of September 2004, and some servers and printers had been moved from Hawaii to Guam, changing the geographic scope of the procurement. The contracting officer amended the RFP to add the printers and the Guam site, and invited revised proposals from all offerors that had responded initially. Prior to the closing time for receipt of proposals, DTI filed this protest.

DTI principally asserts that the agency should award a contract to the offeror next in line for award, instead of amending the RFP and requesting revised proposals.¹ DTI asserts that the proposed changes are not material, and that the amendment therefore is unnecessary, because the additional equipment maintenance is no different than that already specified. DTI notes that the RFP specifically provided that the agency retained the right to add or remove equipment, or otherwise modify the contract as new hardware was acquired or replaced, with any changes to be mutually agreed upon.

¹ DTI raises a number of other arguments. We have reviewed them all and find that none has merit.

Where an agency's requirements change after a solicitation has been issued, the agency must issue an amendment to notify offerors of the changed requirements and afford them an opportunity to respond. Federal Acquisition Regulation (FAR) § 15.206(a); Symetrics Indus., Inc., B-274246.3 et al., Aug. 20, 1997, 97-2 CPD ¶ 59 at 6. An agency must amend the solicitation to reflect a significant change in the government's requirements, even after the submission of final proposal revisions, up until the time of award. NV Servs., B-284119.2, Feb. 25, 2000, 2000 CPD ¶ 64 at 17; see United Tel. Co. of the Northwest, B-246977, Apr. 20, 1992, 92-1 CPD ¶ 374 at 7-9, aff'd, Department of Energy et al., B-246977.2 et al., July 14, 1992, 92-2 CPD ¶ 20. Amending the solicitation provides offerors an opportunity to submit revised proposals on a common basis that reflects the agency's actual needs. Dairy Maid Dairy, Inc., B-251758.3 et al., May 24, 1993, 93-1 CPD ¶ 404 at 7-9.

While, as the protester asserts, there may be little difference between the maintenance to be performed on the printers already covered by the requirement and that required for the additional printers, the agency's actions were proper based on the significant change in its quantity requirements. As noted above, under the original RFP, offerors submitted proposals to maintain an estimated 2,557 computers and 3,148 printers. The amended RFP added an estimated 2,439 impact printers, an increase of approximately 77 percent in the number of printers, and a more than 40 percent increase in the total equipment to be maintained. Quantity estimates in a solicitation establish the general framework for the government's anticipated purchases under the contract, and thus provide the basis for offerors to determine their pricing. Consequently, when an agency knows that there is a serious discrepancy between a solicitation estimate and actual anticipated needs, it should not make award on the basis of the stated estimate but, rather, should revise the solicitation to provide offerors with the most accurate information available. United Tel. Co. of the Northwest, supra, at 9, quoting N.V. Philips Gloellampenfabriken, B-207485.3, May 3, 1983, 83-1 CPD ¶ 467 at 12. Given the significant change in the quantities of equipment to be maintained under the contract, amending the solicitation and seeking revised proposals on that basis was reasonable. The addition of Guam as a performance site further supports the agency's actions. While there is only a limited amount of equipment on Guam—a mid-range computer and two printers—the remote location and 18-hour response time for maintenance would appear to be potentially significant factors that each offeror is entitled to take into consideration in calculating its pricing.²

² We note, furthermore, that by obtaining revised proposals, the agency may obtain more competitive pricing than if it negotiated the changes only with the successful offeror after award. See Kisco Co., Inc., B-216953, Mar. 22, 1985, 85-1 CPD ¶ 334 at 5 (economies of scale associated with increased quantities and their effect on pricing provide reasonable bases for amending proposal).

This case is clearly distinguishable from our decision in Adams Indus. Servs., Inc., B-280186, Aug. 28, 1998, 98-2 CPD ¶ 56, on which DTI relies. In Adams, an agency improperly awarded a purchase order to a firm that was not a small business, and we found that the appropriate course of action was to terminate the purchase order and issue a new one to the firm next in line for award. However, unlike the situation here, in Adams, there was no change in the requirements between issuance of the solicitation and the new award.

The protest is denied.

Anthony H. Gamboa
General Counsel